



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

IDWR EASTERN
REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

June 3, 2004

Wild Horse Partners, LLC
c/o David R. Stoecklein
P.O. Box 856
Ketchum, ID 83340

RECEIVED

JUN 07 2004

Department of Water Resources
Eastern Region

CERTIFIED MAIL

RE: **Notice of Violation**
Violation of Idaho Code §42-701(3) and §42-351

Dear Mr. Stoecklein:

The Idaho Department of Water Resources (IDWR) has determined that Wild Horse Partners, LLC (Wild Horse) is in violation of Idaho Code §42-701(3), specifically diversion of water without lockable controlling works and a measuring device as prescribed in an administrative order issued April 28, 2000. IDWR has determined that Wild Horse is also in violation of Idaho Code §42-351, specifically diversion of water without a valid water right. The point of diversion in question is located in the NW ¼ of the NE ¼ of Section 35, Township 8N, Range 22E, B.M. Wild Horse owns water rights 34-703C and 34-704C, which authorize the diversion of water at this location for irrigation between May 1 and October 15. Wild Horse also owns permit 34-7597, which authorizes diversion of water at this location for a recreational pond between May 1 and October 15. Permit 34-7581, which is a lapsed permit, provides for diversion of water at this location for a recreational pond between October 16 and May 1. Permit 34-7581 lapsed on October 1, 2003. There are no valid water rights or permits authorizing diversion of water at this location between October 16 and April 30.

On February 23, 2004, the watermaster received a complaint that water was being diverted from the location in question to the recreational pond on the north side of the creek. The watermaster reported to IDWR that he shut off this diversion on February 23, 2004 by removing the check board from the diversion structure and constructing a small earthen berm in the ditch. The watermaster also reported to IDWR that he closed the headgate to the ditch on the south side of the creek on February 23, 2004. IDWR issued a pending notice of violation to Wild Horse on February 25, 2004. Wild Horse responded to IDWR on March 3, 2004, stating that diversion of water to the pond was inadvertent and that the diversion was being used for winter stockwater. On March 8, 2004, IDWR notified Wild Horse that there are no water rights authorizing diversion of winter stockwater at the location in question.

On April 21, 2004, IDWR staff visited the diversion in question and found that illegal diversion of water into the ditch on the south side of the creek had been resumed. The check board had been replaced and the headgate on the south side of the creek had been opened. The headgate is not lockable and does not meet the requirements of the administrative order issued April 28, 2000. No measuring device was found on the ditch. The earthen berm constructed by the watermaster on February 23, 2004 was preventing water from entering the ditch on the north side of the creek. Wild Horse has not completed any of the actions recommended in the March 8, 2004 letter to prevent diversion of water to the ditch on the north side of the creek.

The above-described action constitutes a violation of I.C. §42-701(3) wherein after being given prior notice by IDWR through the administrative order of April 28, 2000 and a letter dated April 23, 2003, of the necessity to meet the requirements of I.C. §42-701(1) before any further use or appropriation of public waters, Wild Horse has neglected or refused to meet those requirements. The above-described action also constitutes a violation of I.C. §42-351 wherein water was diverted without a valid right to do so. Wild Horse is hereby ordered to **CEASE and DESIST** any further diversion of water through the point of diversion located in the NW ¼ of the NE ¼ of Section 35, Township 8N, Range 22E, B.M. until an acceptable headgate and measuring device are installed and a valid water right is in effect.

Under §42-701(3) Idaho Code, IDWR may take action pursuant to §42-1701B, Idaho Code, to enforce the requirement to construct, install or maintain suitable headgate and measurement devices. Under §42-1701B, Idaho Code, the director of IDWR may commence an administrative enforcement action to obtain a remedy for a violation and seek a civil penalty not to exceed ten thousand dollars (\$10,000) per violation or one hundred fifty dollars (\$150) per day for a continuing violation, whichever is greater.

Pursuant to Idaho Code, §42-1701B, IDWR requires that the following action be taken:

1. Immediately **CEASE and DESIST** any further diversion of water. Diversion of water shall not be resumed until authorization is received from the Department.
2. Pay an agreed civil penalty in the amount of ten thousand dollars (\$10,000), which is the maximum penalty authorized by law for using waters of the State of Idaho without the required lockable controlling works and measuring device. The civil penalty shall be due and payable to IDWR no later than 30 days from the date of this notice. If Wild Horse immediately begins installation of lockable controlling works and a suitable measuring device, you may petition IDWR at the compliance conference to reduce any penalties sought.

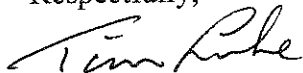
If you object to any provision in this notice, you have the opportunity to schedule a compliance conference to discuss the violation with IDWR. Your written request must be received at this office within 14 days of receipt of this notice. Send written requests to Tim Luke at the address on the letterhead.

Information regarding standard measuring devices and minimum standards can be obtained by referring to IDWR's web site at www.idwr.state.id.us/water/districts/water_measurement.htm. This web site has links to the following documents and publications.

1. IDWR Minimum Acceptable Standards for Open Channel and Closed Conduit Measuring Devices
2. Bureau of Reclamation Measurement Manual
3. University of Idaho Water Measurement Pamphlet

Questions concerning this notice may be directed to Tim Luke at 208-327-7864.

Respectfully,



Tim Luke
Water Distribution Section

Enclosure

cc: James Speck, Speck & Aanestad, P.O. Box 987, Ketchum, ID 83340
Robert Duke, Watermaster, Water District 34
IDWR Eastern Region
Files 34-7581, 34-7597, NOV 2004-02-156